

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Level 3
Communications, LLC's Petition for
Arbitration Pursuant to Section 252(b)
of the Communications Act of 1934,
as Amended by the
Telecommunications Act of 1996, and
the Applicable State Laws for Rates,
Terms, and Conditions of
Interconnection with Qwest
Corporation

**PROTECTIVE AGREEMENT
AND ORDER**

WHEREAS, the parties in this proceeding may request each other to share information about or to produce certain valuable confidential, proprietary and business information including third party information, including documents, data, information, financial information, business plans, procedures, protocols, methodologies, measurements, computer models, work papers, analyses and other materials in this proceeding ("Confidential Information");

WHEREAS, some of the Confidential Information requested or likely to be requested may constitute trade secret information as defined in Minn. Stat. § 13.37 ("Trade Secret Information");

WHEREAS, no protective order has been issued by the Commission and without such order or its equivalent, the parties are unwilling to produce Confidential Information and/or Trade Secret Information which, in the party's view, is legally protected Trade Secret Information and/or Confidential Information;

WHEREAS, the parties are willing to produce Confidential Information and/or Trade Secret Information which, in the party's view, is legally protected Trade Secret Information and/or Confidential Information subject to the terms of this Agreement; and

WHEREAS the parties have agreed to the entry of this Order for the purpose of protecting and exchanging confidential, trade secret, and business information;

IT IS HEREBY ORDERED:

1. (a) Trade Secret Information and Confidential Information. All Trade Secret Information and/or Confidential Information shall be furnished pursuant to the terms of this Protective Agreement and Order, and shall be treated by all persons accorded access thereto pursuant to this Protective Agreement and Order as constituting confidential, competitive, trade secret, and business information, and shall be used solely for the purpose of this proceeding and solely in accordance with this Protective Agreement and Order, and shall not be used or disclosed for any other purpose or in any other manner. In accordance with the Commission's September 1, 1999, *Revised Procedures for Handling Trade Secret and Privileged Data* (Commission's Procedures), all documentary material claimed to be Trade Secret Information or Confidential Information shall be marked substantially as follows by stamping each individual page with the designation "**CONTAINS TRADE SECRET DATA—CONFIDENTIAL INFORMATION—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. P-5733,421/1C-06-49.**" All copies of documents so marked will be made on colored paper. For purposes hereof, notes made pertaining to or prepared as the result of a review of Trade Secret Information or Confidential Information shall be subject to the terms of this Protective Agreement and Order. Any Trade Secret Information or Confidential Information received in photographic, digital or electronic formats shall be identified as protected by the producing party by means appropriate to the medium and shall be handled by the recipient in a manner suitable to protect its confidentiality.

(b) Use of Trade Secret or Confidential Information and Persons Entitled to Review. All Trade Secret Information or Confidential Information made available pursuant to this Protective Agreement and Order shall be given solely to counsel for the requesting party or other authorized persons who are designated by counsel as being the party's experts or witnesses in this proceeding and who execute Exhibit A in a timely manner prior to their receipt of the Trade Secret Information and/or Confidential Information. Trade Secret Information and/or Confidential Information shall not be used or disclosed except for purposes of this proceeding. The Trade Secret Information and/or Confidential Information may not be used or referenced in other proceedings in Minnesota or in other jurisdictions. Unless otherwise provided in this Protective Agreement and Order, all Trade Secret Information will be safeguarded and handled in accordance with the Commission's Procedures.

(c) Nondisclosure Agreement. Prior to giving access to Trade Secret Information and/or Confidential Information as contemplated in paragraphs (a)-(b) above to any expert or witness, whether or not such expert or witness is a person designated to testify in any such proceeding, counsel for the party seeking review of the Trade Secret Information and/or Confidential Information shall deliver a copy of this Protective Agreement and Order to such person; and

prior to disclosure such person shall agree in writing to comply with and be bound by this Protective Agreement and Order. In connection therewith, Trade Secret Information and/or Confidential Information shall be disclosed only to the extent necessary for the presentation of the party's case and shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is attached hereto and incorporated herein as Exhibit A. The Exhibit A Nondisclosure Agreement shall require the person to whom disclosure is to be made to read a copy of this Protective Agreement and Order and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The Nondisclosure Agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such Nondisclosure Agreement shall be delivered to counsel for the providing party prior to the expert or witness gaining access to the Trade Secret or Confidential Information.

2. Challenge to Confidentiality, Trade Secret Designation or Other Special Requests. This Protective Agreement and Order establishes a procedure for the expeditious handling of Trade Secret Information and/or Confidential Information. It shall not be construed as an agreement or ruling on the discoverability, confidentiality or trade secret designation of any such information or document. Any party at any time upon ten (10) days prior notice may seek by appropriate pleading to have documents or other matters that have been designated as Trade Secret Information or Confidential Information removed from the protective requirements of this Protective Agreement and Order or to have them handled in a manner differently than described in this Protective Agreement and Order (either for greater or lesser confidentiality protections). If the trade secret or confidential nature of this information is challenged, resolution of the issue shall be made by the Administrative Law Judge or Commission after proceedings *in camera* which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such trade secret or confidential information shall be present. The record of such *in camera* hearings shall be marked **"CONTAINS TRADE SECRET DATA—CONFIDENTIAL INFORMATION—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. P-5733,421/1C-06-49"** unless the ALJ or Commission determines that the proceeding should not be classified as involving Trade Secret Information or Confidential Information.

3. Use of Trade Secret Information and/or Confidential Information in Comments or Pleadings. Where reference to Trade Secret Information and/or Confidential Information is required in pleadings, cross-examinations, briefs, argument or motions, it shall be by citation of title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Trade Secret Information and/or Confidential Information shall be placed in a separate "Nonpublic" copy of the pleading or brief and submitted to the Commission or Office of Administrative Hearings pursuant to the terms of the Commission's Procedures. This "Nonpublic" copy shall be served only on counsel of record (one copy each) who have signed a Nondisclosure Agreement.

All the protections afforded in this Protective Agreement and Order apply to materials prepared and distributed under this paragraph.

4. Use of Trade Secret Information and/or Confidential Information in Depositions. If, in the course of depositions, counsel for any party concludes that testimony or exhibits will involve Trade Secret Information and/or Confidential Information, counsel shall request that the court reporter record such testimony in a confidential transcript that is marked “**CONTAINS TRADE SECRET DATA—CONFIDENTIAL INFORMATION—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. P-5733,421/1C-06-49.**” All Exhibits which have been marked as involving Trade Secret Information and/or Confidential Information shall be attached to the confidential transcript and marked consistent with the Commission’s Procedures. Each party has the right to identify a transcript or exhibits as including Trade Secret Information and/or Confidential Information pursuant to this paragraph for up to three business days after the deposition is completed.

5. Use of Trade Secret Information or Nonpublic Data in Hearings or Commission Meetings. The Receiving Party shall not use Trade Secret and/or Confidential Information in a hearing without first (a) providing prior notice to the disclosing party regarding the information to be used and (b) conferring with the disclosing party regarding limitations or procedures that can be used to avoid disclosing the confidential aspects of the information at issue to persons not otherwise entitled to receive such information. If the parties cannot reach agreement regarding the use of such information, then the dispute shall be submitted to the Administrative Law Judge or the Commission before the information is used or publicly disclosed. Without limiting the foregoing, no party shall refer to Trade Secret and/or Confidential Information on oral testimony, cross-examination or argument except in accordance with this paragraph.

6. Return. Unless otherwise ordered, all Trade Secret and/or Confidential Information, including transcripts of any depositions to which a claim of “trade secret” or “confidential” status is made, shall remain under seal, shall continue to be subject to the protective requirements of this Protective Agreement and Order, and shall be returned to counsel for the disclosing party within 30 days after final settlement or conclusion of the applicable matter including administrative or judicial review thereof, unless otherwise agreed by the disclosing party.

7. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Trade Secret and/or Confidential Information by reason of this Protective Agreement and Order shall neither use nor disclose the Trade Secret and/or Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of these proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Trade

Secret Information and/or Confidential Information secure and in accordance with the purposes and intent of this Protective Agreement and Order.

8. Reservation of Rights. The parties hereto affected by the terms of this Protective Agreement and Order further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Agreement and Order in response to interrogatories, requests for information or documents or cross-examination on the grounds of relevancy or materiality.

9. Inadvertent Disclosure. No party shall have waived its right to designate any documents, data, information, studies, or other materials as Trade Secret Information or Confidential Information by inadvertent disclosure, provided the disclosing party thereafter gives written notice to the recipient(s) of such information that it should have been designated as Trade Secret Information or Confidential Information. From and after receipt of such notice, the previously disclosed information subsequently identified as Trade Secret Information or Confidential Information shall be treated as Trade Secret Information or Confidential Information for purposes of this Protective Agreement and Order.

10. Information Provided to State Agencies. The files of the Public Utilities Commission, the Office of Administrative Hearings, the Department of Commerce, the Office of the Attorney General, and other state agencies containing trade secret data or otherwise protected information shall be treated as required by Minn. Stat. §§ 13.01 *et seq.* and 138.161 *et seq.* and shall not be subject to the return requirements of this Protective Agreement and Order. Notwithstanding the restrictions set forth in paragraphs 1-9 above, employees of the state agencies are not required to sign Exhibit A to receive Trade Secret or Confidential Information.

Dated: March 7, 2006.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

s/Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

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EXHIBIT A
NONDISCLOSURE AGREEMENT

I have reviewed the Protective Agreement and Order dated March 7, 2006, in this docket with respect to the review and use of Trade Secret Information and/or Confidential Information as defined therein, and in consideration of being granted access to such information, which I could not otherwise readily obtain, I agree to be bound by the terms and conditions of such Agreement and Order.

Date: _____, 2006

Signature

Type or Print Name

Address

Name of Employer

Business Address

Name of Party